

In the United States District Court
For the District of Puerto Rico

The United States of America,

Plaintiff

v.

Luis J. Nieves-Siarez,

Defendant.

Cr. No.: 16-803 (DRD)

Violation: 18 U.S.C. § 922(o)

Supplemental Sentencing Memorandum

TO THE HONORABLE DANIEL R. DOMINGUEZ
UNITED STATES SENIOR JUDGE
FOR THE DISTRICT OF PUERTO RICO

COMES NOW the defendant, Luis J. Nieves-Siarez (hereinafter “Mr. Nieves-Siarez”), represented by the Federal Public Defender for the District of Puerto Rico, through the undersigned attorney, and very respectfully states, alleges and prays as follows:

1. On June 15, 2017, the United States Probation Officer (hereinafter “USPO”) Ms. Taisa Mojica filed an Amended Presentence Report (hereinafter “PSR”).¹ On said PSR, the USPO calculated a four (4) level enhancement to the defendant’s Guidelines’ calculations, “*since the defendant used or possessed the machinegun in connection with another felony offense*” pursuant to USSG §2K2.1(b)(6)(B). The four (4) level enhancement is based on a video in which the defendant is seen aiming and firing a machinegun that matches the description of the one seized

¹ See Docket No. 32.

during the instant arrest. As a result, with a Total Offense Level of 19 and a Criminal History Category of I, the USPO calculated a Guidelines' range of **30-37 months of imprisonment**.

2. On July 11, 2017, Mr. Nieves-Siarez filed Formal Objections to the PSR and a Sentencing Memorandum.² In said motions, the defendant objected to the four (4) level enhancement and requested a sentence of **18 months of imprisonment**.³

3. On July 15, 2017, the Government filed a Sentencing Memorandum and requested a **60 months sentence of imprisonment** (a variance of 23 months from the upper end of the applicable Guidelines' range calculated by the USPO).⁴

4. After careful review and consideration of the Sentencing Memorandum filed by the Government and the arguments raised by the USPO, Mr. Nieves-Siarez would no longer be objecting the four (4) level enhancement pursuant to USSG §2K2.1(b)(6)(B). Mr. Nieves-Siarez specifically does not object the enhancement based on the video in which he is seen aiming and firing a machinegun that matches the description of the one seized during the instant arrest.

² See Docket No. 36 and 37.

³ Mr. Nieves-Siarez argued that the four (4) level enhancement was not warranted and therefore, argued a Guidelines' Base Offense Level of 18, with a three (3) level deduction for acceptance of responsibility, for a Total Offense Level of 15. With a TOL of 15, and a Criminal History Category of I, the defendant would face a Guidelines' range of 18-24 months of imprisonment.

⁴ See Docket No. 38.

5. As a result, with a Total Offense Level of 19 and a Criminal History Category of I, we agree with the USPO's Guidelines' calculations of **30-37 months of imprisonment**.

6. Bearing in mind the factors to be considered in imposing a sentence under 18 U.S.C. § 3553 and the Sentencing Memorandum filed by Mr. Nieves-Siarez, the defendant respectfully requests the Honorable Court to impose a sentence at the lower end of the applicable Guidelines for an **imprisonment term of 30 months**, a sentence sufficient but not greater than necessary to serve the goals of sentencing.

WHEREFORE, the Defendant, Mr. Nieves-Siarez, respectfully requests the Honorable Court to take note of this supplemental sentencing memorandum and sentence him to 30 months of imprisonment.

I HEREBY CERTIFY that on this date I electronically filed the present motion with the Clerk of the Court using the CM/ECF system which will send electronic notification of said filing to all parties of record. Superseding

Respectfully submitted.

In San Juan, Puerto Rico, this 24th day of July, 2017.

Eric A. Vos
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District of Puerto Rico

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